

Alternative Dispute Resolution (ADR)

DECISION

2008-11-20

CASE NUMBER

269

APPLICANT

Marks kommun

511 80 Kinna

COUNSEL

Kommunchef Bo R

Marks kommun

511 80 Kinna

OPPONENT

Merlana Global Corporation

08137 Paphos

Cyprus

MATTER

Alternative Dispute Resolution regarding the domain name <markskommun.se>

.SE pronounces the following

DECISION

The domain name <markskommun.se> shall be transferred to the Applicant, Marks Kommun.

LANGUAGE OF THE PROCEDURE

In accordance with Section 22 of the Procedural rules (“the Rules”) for Alternative Dispute Resolution for the top level domain “.se”, an application for alternative dispute resolution may always be filed in Swedish. Where the language of the registration of the domain name is English, as in this case, the language of the dispute resolution procedure shall also be English.

PROCEDURAL HISTORY

An Application for Alternative Dispute Resolution regarding the domain name <markskommun.se> was received by .SE on September 5, 2008 and communicated to the Opponent in accordance with Section 9 of the Rules. The Applicant paid the fee to .SE on September 5, 2008. On October 14, 2008, Johan Sjöbeck was appointed as Arbitrator in the proceeding. The projected decision date was set to November 20, 2008. The deadline for the Opponent to file a Response was October 17, 2008. The Opponent did not respond to the application for Alternative Dispute Resolution within the set timeframe. On November 4, 2008 an unidentified person claiming to represent the Opponent filed a late Response to the Application for Alternative Dispute Resolution.

CLAIMS

The Applicant has claimed that the disputed domain name <markskommun.se> shall be transferred to the Applicant, Marks Kommun.

The Opponent has contested the Applicant’s claim.

PARTIES’ CONTENTIONS

The Applicant

The name MARKS has been a well established name in Sweden for a geographic location in the Marks härad region since the 14th century. In 1971, the Applicant registered the name MARKS KOMMUN when several municipalities in Marks härad merged together. The municipality of MARKS KOMMUN has registration number 212000-1504.

The disputed domain name <markskommun.se> is identical to the Applicant's name MARKS KOMMUN. The disputed domain name gives a false impression to the public that the disputed domain name is associated with the official municipality of Marks.

The Opponent has no rights or legitimate interest to the disputed domain name <markskommun.se>.

It is the opinion of the Applicant that internet users searching for the municipality MARKS KOMMUN and its services for the public good may be lured to the Opponent's website to which the disputed domain name resolves. The Opponent is using the disputed domain name for commercial purposes through multiple sponsored links which has nothing to do with the Applicant.

The disputed domain name was registered and is being used in bad faith. The Opponent must have been aware of the Applicant's name MARKS KOMMUN at the time of registration. Furthermore, the Opponent registered the disputed domain name with the intent to attract internet users to the Opponent's website containing multiple sponsored links.

The Applicant requests that the Arbitrator issue a decision that the disputed domain name <markskommun.se> shall be transferred to the Applicant.

The Opponent

The Opponent contests the Applicant's claim and maintains that a Swedish municipality is not a Swedish trademark or business. The Opponent displays pay-per-click internet ads on different homepages. The design and links on the website to which the disputed domain name resolves can be compared to the Yellow pages. The domain name was registered on a "first-come first-served" basis in 2006. The Applicant had a chance to register the domain name for many years before the Opponent but did not do so.

DISCUSSION AND FINDINGS

In accordance with Paragraph 18 of the General Conditions for Registration of Domain Names, a domain name may be deregistered or transferred to the party who requested the dispute resolution proceedings provided that the domain name is identical or confusable with a trademark, a

business brand, a family name, an artist's name (except where the name relates to someone who died a long time ago), a title of another protected literary or artistic work, a name protected through the Swedish law förordning om vissa officiella beteckningar (1976:100), a geographical indication or designation protected through Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs which has a legal basis in Sweden and to which the party requesting the dispute resolution can prove a right, and the Holder does not have any right or justified interest in the domain name, and the domain name is registered or used in bad faith.

Identical and/or confusingly similar

The Applicant has stated that the municipality since the year 1971 is officially registered as MARKS KOMMUN with the registration number 212000-1504. From the submitted evidence in the case it can be held that the Applicant is using the registered name MARKS KOMMUN in order to conduct business and services for the public good in Sweden through a number of wholly owned subsidiary limited companies incorporating the word MARKS and thus the registered name of the enterprise MARKS KOMMUN is comparable to a registered company name.

The disputed domain name <markskommun.se> contains the registered name MARKS KOMMUN in its entirety.

It is the opinion of the Arbitrator that the disputed domain name <markskommun.se> is identical to the registered name of the enterprise MARKS KOMMUN as described in Paragraph 18 c) of the General Conditions for Registration of Domain Names.

Rights or justified interests in respect of the domain name

It has been argued by the Applicant that the Opponent has no legitimate or justified interests to the disputed domain name <markskommun.se> and that the disputed domain name is misleading internet users for commercial purposes. From the submitted evidence in this case, it is clear that the Opponent's website, to which the disputed domain name resolves, contains numerous sponsored commercial links. The Opponent's use of the disputed domain name, which is identical to the Applicant's registered name MARKS KOMMUN, serves the purpose of generating revenue

via advertised pay-per-click products and sponsored click-through links. The commercial use of the disputed domain name described above has been confirmed by the Opponent.

No circumstances or submitted material in the case indicate that the Opponent has used the disputed domain name in such a way that a legitimate or justified interest can be presumed. Furthermore, there is nothing in the case before the panel that indicates that the Opponent is commonly known by the disputed domain name despite the fact that the Opponent has not acquired any rights to the name that constitutes the domain name.

The Opponent has not presented any evidence that refutes the Applicant's submissions or demonstrates a possible right or justified interest as described in Paragraph 18 d) of the General Conditions for Registration of Domain Names.

Registered or used in bad faith

The Applicant's registered name MARKS KOMMUN predates the disputed domain name <markskommun.se> and it has been argued by the Applicant that it is obvious that the Opponent knew or must have known about the name MARKS KOMMUN when registering the disputed domain name on June 2nd, 2006. The Opponent has contested the allegations of the Applicant and stated that the domain name registration was made on a "first-come first-served" basis. Furthermore, the Opponent states that the disputed domain name is similar to reserved geographic domain names that will be released in December 2008. However, having in mind that the disputed domain name contains the addition "kommun", the nature of the disputed domain name differs from the nature of the above mentioned reserved geographic domain names.

The circumstances in the case indicate that the Opponent has been aware of the Applicant's registered name MARKS KOMMUN when registering the disputed domain name <markskommun.se> and that the domain name has intentionally been used in an attempt to attract Internet users to the Opponent's website by creating a likelihood of confusion with the Applicant's registered name and to generate, for commercial gain, revenue via advertised pay-per-click products and sponsored click-through links. The Applicant has submitted numerous printouts from the website to which the disputed domain name resolves demonstrating that the disputed domain name is used in connection with commercial sponsored links, which has also been confirmed by the Opponent.

There is no evidence in the case that refute the Applicant's submissions.

Considering the above, it is the opinion of the Arbitrator that the Opponent has registered and used the disputed domain name in bad faith, as described in Paragraph 18 e) of the General Conditions for Registration of Domain Names.

DECISION

On the basis of the foregoing, the Arbitrator considers that the disputed domain name is identical to the Applicant's registered name, that the Opponent has no rights or justified interest in the domain name and that the domain name at issue has been registered and is being used in bad faith.

Accordingly, pursuant to Paragraph 18 of the General Conditions for Registration of Domain Names and in accordance with the request by the Applicant, the domain name at issue shall be transferred to the Applicant.

For all the foregoing reasons the Arbitrator orders that the domain name <markskommun.se> be transferred to the Applicant, Marks Kommun.

On behalf of .SE

.....
Johan Sjöbeck